THE HONOURABLE SRI JUSTICE
A.GOPAL REDDY

W.P.No.15084 of 1995

Dt. 14-09-2007

Between:

The Employer, the Executive Engineer,
Maintenance Division, Narasannapet,
Srikakulam District.

..Petitioner

and

1. K.Bairagi and another

..Respondents.

THE HONOURABLE SRI JUSTICE
A.GOPAL REDDY

W.P.No.15084 of 1995

Order:

In this case petitioner obtained a Rule from this Court asking the respondents to show cause why a writ in the nature of Certiorari should not be issued under Article 226 of the Constitution of India after calling the records pertaining to I.D.No.79 of 1991 dated 08-10-1994 from the file of 2nd respondent and to quash the same.

The 1st respondent—workman raised an industrial dispute before the Assistant Commissioner of Labour, Visakhapatnam who advised him to approach the Labour Court under Section 2A(2) of the Industrial Disputes Act, 1947 (for short "the Act"). On his advice the workman filed I.D.No.336 of 1989. The workman was directed to approach the Tribunal by way of reference instead of Section 2A(2) of the Act, as the termination of the services of the workman was prior to 1987. Accordingly, the same was referred by the Deputy Commissioner of Labour, Visakhapatnam in Rc.No.1642/91 dated 04-05-1991 as under:

> "Whether the termination of services of the 1st respondent-workman by the Executive Engineer, Vamsadhara Project, Maintenance Division, Narasannapeta is justified?"

The facts, which lead to the reference, may briefly be stated as under:

The 1st respondent was engaged on daily wage basis from 1976 to 1982 and also engaged from 1983 to 1986 in various

capacities as Concrete Mixture Operator and Roller Driver. His services were terminated without notice and payment of compensation while his juniors—Narasimha Murthy and Noorkaraju are retained in the service. In I.D.No.336 of 1989 filed under Section 2A(2) it was contended by the workman that he worked continuously from 1976 to 1986. Whereas the respondent—employer contended that the workman was not worked continuously from 1976 to 1983 and retrenchment compensation of Rs.495/- was paid to the workman, which was accepted by him and the workman was not appointed as monthly salary at any time in any vacancy; the work of the project on which his services were engaged was completed so, his services were dispensed with. After recording the evidence the workman was advised to approach the Tribunal, which lead to filing the reference. Both the workman and the employer filed joint memo to treat the evidence in I.D.No.336 of 1989 as evidence in the present I.D. After considering the entire evidence the Labour Court found that no notice of retrenchment was given to the workman and there is no order of retrenchment against him which fact has been admitted in the counter filed by the employer. In the evidence it was also admitted that the project work is still under progress and there were 170 work charged persons and 10 NMRs who are working under the orders of the Court in view of awards passed by the Industrial Tribunal. M.W.1 stated that he does not know whether the workman was removed from service while his juniors were still continued. In view of evidence of WWs.1 to 3 and the admissions made in the counter about the period of working days it is established that the workman worked continuously under the petitioner-management till the year 1986 and the management failed to produce material record available in their office to disprove the contention of the workman. As the procedure contemplated under

Section 25-F of the Act was not followed by giving one month notice or compensation in lieu of notice the Tribunal held that termination is illegal and ordered for reinstatement with back wages from the date of filing I.D.No.336 of 1989, but the workman was entitled to continuity of service on notional basis.

Questioning the said award the present writ petition has been filed by the petitioner—management raising the very same contentions that were not accepted by the Labour court. Further, it was contended that the workman taken contrary pleas; the pleas in the petition filed before the Tribunal are different from the petition filed before the Assistant Commissioner of Labour wherein it is stated that he worked upto 1982 and in other petition it is stated that he worked continuously upto 1986. In fact, the workman worked 45, 90 and 30 days in the years 1983, 1985 and 1986 respectively which clearly goes to show that he was engaged as casual labour on seasonal basis. So, the Labour Court is not justified in ordering reinstatement.

Learned Government Pleader for Irrigation appearing for the petitioner—management contended that once the workman was appointed as daily wage employee and whose services were terminated prior to coming into force of Section 2A of the Act, the proceeding initiated under Section 2A are not valid proceedings and the Labour court has rightly not taken the same into consideration. When the workman was appointed on contractual basis and not on regular worker, Section 25-F of the Act has no application. As the services of the workman were terminated as per the terms of appointment, he is not entitled to invoke Section 25-F and the Labour Court has committed an illegality in extending the benefit of Section 25-F of the Act. In support of his submission reliance is placed on

MANAGER, RESERVE BANK OF INDIA v S.MANI[1] and ***BATALA COOP. SUGAR MILLS LTD. v SOWARAN SINGH***[2].

Per contra, learned counsel for the 1st respondent—workman strenuously contended that though the workman was appointed as daily wage employee, his services were utilized as Concrete Mixture Operator and Roller Driver and other works. On his termination he raised a dispute; during the pendency of conciliation proceedings Section 2A of the Act was introduced; therefore, he filed I.D.No.336 of 1989; there is no evidence adduced by the petitioner—management that the project work has been completed and no other workmen junior to the 1st respondent were engaged. Therefore, the Labour Court rightly passed the award directing reinstatement of the workman. He placed reliance on the following judgments:

1. ***S.M.NILAJKAR v. TELECOM DISTRICT MANAGER***[3]
2. ***RANGE FOREST OFFICER v S.T.HADIMANI***[4]
3. ***CE T.D.A. v PRESIDING OFFICER, IT-CUM-LC, VISAKHAPATNAM***[5]
4. ***B.TRINADHA RAO v PRESIDING OFFICER, IT-CUM-LC, VISAKHAPATNAM***[6]
5. ***D.MOHAN RAO v THE EXECUTIVE ENGINEER, VAMSADHARA PROJECT***[7]
6. ***DEPUTY EXECUTIVE ENGINEER, GOTTA BARRIAGE SUB-DIVISION, VAMSADHARA PROJECT v KALLAPALLI RAMULU***[8]

In W.P.No.11396 of 1997 (8 supra) the Deputy Executive Engineer, Gotta Barriage Sub-Division, Vamsadhara Project, Hiramandalam challenged the award passed by the Industrial

Tribunal-cum-Labour Court in I.D.No.56 of 1991 dated 25-09-1996. This Court after considering the various judgments held that burden to prove that he had put in minimum 240 days service during the period of 12 months prior to the date of his termination is on the workman and in the absence of the workman having discharged this burden, it cannot be said that the mandatory requirement under Section 25-F is violated and accordingly set aside the award.

Further, in ***D.MOHANA RAO'S*** case (7 supra) this Court allowed the writ petition filed by the workman ordering reinstatement of the petitioner therein into service with back wages to the extent of three years while setting aside award passed by the labour Court.

The Supreme Court in ***RANGE FOREST OFFICER*** (4 supra) held that the Tribunal was not right in placing the onus on the management without first determining on the basis of cogent evidence that the respondent had worked for more than 240 days in the year preceding his termination. It was the case of the claimant that he had so worked but this claim was not denied by the appellant. It was then for the workman to lead evidence to show that he had in fact worked for 240 days in the year preceding his termination. No proof of receipt of salary or wages for 240 days or order or record of appointment or engagement for this period was produced by the workman. On this ground alone, the award is liable to be set aside, but the workman will be given an employment on compassionate grounds on the same terms as he was allegedly engaged prior to his termination. Holding so disposed of the appeal.

The Punjab and Haryana High Court in ***BIKARAM SINGH v PEPSU ROAD TRANS, CORN.***[9] held that if a workman has

completed 240 days in a period of 12 months preceding the date of his retrenchment from employment and if no retrenchment compensation has been paid to him under Section 25-F of the Act, ordinarily, the action of the Management will be void unless the employer leads evidence and proves otherwise that the termination of services are within the exception of Section 2(oo)(bb) of the Act and burden lies on the employer and not upon the employee—workman to prove the same.

In the claim statement filed by the 1st respondent—workman he has stated that he worked as Concrete Mixture Operator, Roller Driver and Laskar from the year 1976 till the end of 1986 continuously and removed from service without notice and without payment of retrenchment compensation. In support of his claim he was examined as WW1 and stated that he continuously worked from 1976 to 1986 while receiving monthly wages; either notice or compensation or any other terminal benefits were paid to me. In the cross-examination he admitted that he is not having service certificate in proof of his service; he was not served with any appointment order or termination order; he was signing in the NMR form. Another co-worker—P.Ramachandra Rao was examined as WW2, who stated that he knows the 1st respondent—workman since from 1977; he worked continuously from 1977 to 1986 and removed from service in 1986. In the cross examination he admitted that the workman worked as NMR after 1983 and denied that he worked about spells of 10 or 15 days after 1983; he does not know whether the workman along with other workman removed from service in 1983 according to Government Orders; he also does not know how many days the management was paying to the workman after 1983. The Work Inspector, who was examined on

behalf of management as L.W.1, deposed that he was working as Inspector from 06-03-1976; he knows the workman while working in the management jurisdiction; the workman worked both in Concrete Mixture and Roller Operator and worked from 1984 to 1986 as seasonal Lascar. In the cross-examination he stated that he knows the workman has worked in the department upto 1986, but do not know why the workman has stated that he worked in the department upto 1983 only. In service particulars of the workman it is mentioned that he worked the following days:

Period	No. of days worked
From 1-6-76 to 11-12-76	207 days
1-1-77 to 20-7-77	193 days
23-2-81 to 31-12-81	267 days
1-1-82 to 20-3-82	57 days
21-5-82 to 31-12-82	203 days
1-1-83 to 19-2-83	45 days
1-8-85 to 30-11-85	90 days
1-8-86 to 15-8-86	15 days
1-9-86 to 15-9-86	15 days
Total	1092 days

The service particulars as furnished by M.W.1 in Ex.M1 goes to show that the workman has not worked for 240 days in the year preceding to his termination. The Labour Court has not adverted to the said particulars furnished on which no suggestion was made to the management that service particulars as furnished was not correct. The Labour Court has not discussed this aspect nor paid attention to this

aspect whether the workman has worked for 240 days in the year preceding to his termination for entitlement of benefit of 25-F before ordering for reinstatement with back wages.

Therefore, the order passed by the Tribunal that the workman is entitled to reinstatement with back wages, without there being any proof to the fact that he worked for 240 days in the year preceding to his termination and in the absence of any suggestion to the management witness that the service particulars shown in Ex.M1—Service Certificate are not genuine, the presumption drawn by the Labour Court that the workman worked continuously cannot be sustainable and the same is accordingly set aside and the matter is remitted to the Labour Court to give a finding keeping in view of the judgment of the Supreme Court ***S.M.NILAJKAR v. TELECOM DISTRICT MANAGER*** (3 supra). It is needless to say that the parties are at liberty to lead further evidence in proof that the workman has worked for 240 days in the year preceding to his termination.

In view of the fact that during the pendency of the writ petition the workman has reinstated and is working as casual labour, *status quo* existing as on today shall be continued and the lower court is directed to dispose of the I.D. preferably within a period of three months from the date of receipt of a copy of this order.

The writ petition is accordingly allowed. No costs.

_____

A.GOPAL REDDY, J.

14-09-2007

Murthy

---

[1] (2005) 5 SCC 100

[2] (2005) 8 SCC 481

[3] AIR 2003 SC 3553

[4] (2002) 3 SCC 25

[5] 2005(4) ALD 756

[6] 2007 (4) ALD 346

[7] unreported judgment in W.P.No.26743 of 1998 dt.10-07-2007

[8] unreported judgment in W.P.No.11396 of 1997 dt.01-02-2007

[9] 2005 (5) SLR 87